IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Gurdeeta Ram & Ors. Vs. The State of Rajasthan
(D.B. CRIMINAL APPEAL NO.185/2002)

D.B. Criminal Appeal under Section 374(2) Cr.P.C. against the judgment dt.7.2.2002 passed by the Additional Sessions Judge (Fast Track), Anoopgarh in Sessions Case No.4/2002.

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Date of Judgment: September 8th, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.M.K.Garg, for the appellants
Mr.O.P.Rathi, Public Prosecutor

BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

1. The appellants Gurdeeta Ram, his wife Pallo and daughter Jamna have been convicted of offence under Section 302/34 I.P.C. by the judgment of the learned Additional Sessions Judge(Fast Track), Anoopgarh dated 7.2.2002 and sentenced to imprisonment for life and to pay a fine of Rs.1000/-; in default of payment to

further undergo 3 months' simple imprisonment. The appellants have also been convicted of offence under Section 452 I.P.C. and each of them sentenced to 2 years rigorous imprisonment and to pay a fine of Rs.300/-; in default of payment to further undergo 1 month's simple imprisonment.

2. Briefly stated the prosecution case is that on 6.9.95, P.W.1 Guddy wife of the deceased Ram Pratap lodged a First Information Report at6 Police Station, Ramsinghpur stating inter alia that in the afternoon at about 1 P.M. while she was returning to her house, she witnessed from a distance of one Bigha that the first appellant Gurdeeta Ram, his wife Smt.Pallo and three daughters Jamna, Sukho and Sibo were dragging out her husband from the house. Gurdeeta was carrying a Barchi in his hand. The other three girls were carrying sticks with them. All of them were shouting to the effect that they will not leave Ram Pratap alive. She raised voice, which attracted P.W.3 Harkha Ram, P.W.4 Hansraj and P.W.2 Duda Ram. They were threatened by the accused person not to come close else they will also face the same consequence. The deceased Ram Pratap was taken in the house, wherein he was being

belaboured by the accused persons. The dead body of Ram Pratap was thrown on the back side of the house. On this information the police registered a case for offence under Sections 302,452,147,148 & 149 I.P.C. After usual investigation police laid charge-sheet against appellants Gurdeeta Ram, Pallo and Jamna. However, the police found no case against the other two daughters namely Sukho and Sibo. The trial court relying on the ocular evidence supported by the medical evidence and the evidence of recovery found the prosecution case proved and as such convicted and sentenced the appellants in the manner stated above.

3. We have heard learned counsel for the appellants and the learned Public Prosecutor and also perused the record carefully. It is not in dispute that the deceased Ram Pratap died of homicidal death. P.W.5 Dr.Chandra Mohan was one of the member of the Medical Board, which conducted the post-mortem on the dead body of deceased Ram Pratap vide Ex.P13. The Board noticed the following injuries:-

(1) Bruise 3 x 2 cm on right parietal area of scalp.

(2) Bruise 3 x 1½ cm on left parietal area

of scalp.

(3) Bruise 3 x 1 cm on right side of chin.

(4) Bruise(swelling) 14 x 10 cm on upper part of right chest.

(5) Bruise 5 x 4 cm on right shoulder.

(6) Abrasion (3 in No.) 1 x 1 cm each on flexor aspect of left elbow.

(7) Bruise 5 x 4 cm on left iliac creast.

(8) Abrasion 2 x 1 cm on right iliac creast.

(9) Bruise 8 x 7 cm on left side of back upper part.

(10) Bruise 1 cm wide around the anus.

(11) Bruise 5 x 4 cm on the back of neck.

On dis-section of Injury No.11, there is subcutaneous collection of dark blood underneath this there is fractured dislocation of Ist & IInd cervical vertebra on its posterior aspect.
-covering of spinal cord(membranes) is also lacerated with collection of effused blood, spinal cord at C-1 & C-2 is lacerated.

On dis-section of Injury No.4 – There is subcutaneous collection of blood with air bubbles coming out. On further dissection on muscles under lying injury are lacerated with blood collection, effused. There is fractured of 2nd and 3rd Rib on front of right side of chest. Ribs are indenting the upper lobe of right lung and pluera causing laceration of pluera & lungs. Right thoracic cavity contain dark fluid of blood.

In the opinion of the Medical Board the cause of death of deceased Ram Pratap was due to combined shock caused by excessive haemorrhage from right lung and spinal cord injury at C-1 & C-2 segment which caused spinal shock also.

4. The star witness of the occurrence is P.W.1 Guddy the wife of the deceased. She deposed that on the fateful day while she was returning to her filed, the appellants Gurdeeta, his wife Pallo and three daughters were seen dragging her husband out of the house. They were carrying lathies in their hands. She raised hue and cry, which attracted P.W.2 Duda Ram, P.W.3 Harkha Ram and P.W.4 Hansraj. When they tried to intervene to rescue her husband, the appellants gave a threat of dire consequences. The accused persons took her husband Ram Pratap inside the house, wherein he was given severe beating by them. The dead body of Ram Pratap was thrown on the back side of the house. In the cross examination, she admitted that she had witnessed the incident from about a distance of one Bigha. She also stated that appellant Gurdeeta was carrying Barchi, whereas the lady accused persons were carrying lathies.

5. P.W.2 Duda Ram deposed that on the date of occurrence, hearing the cries of the wife of deceased Ram Pratap he rushed to the spot. Deceased Ram Pratap was being belaboured by the accused persons. When he tried to intervene the accused persons threatened them of dire consequences. All the accused persons were carrying lathies with them. In the cross examination, he admitted that number of persons had assembled on the spot. He had not seen the daughters of accused Gurdeeta. He had also not seen Harkha Ram and Hansraj. The statement of P.W.3 Harkha Ram is almost on the same line. He stated that he had seen the incident from the tank, which is in front of the house of P.W.1 Guddy. The statement of P.W.4 Hansraj is also on the same line. In the cross examination he admitted that he had not seen appellant Gurdeeta inflicting injuries to Ram Pratap by Barchi.

6. P.W.10 Narendra Kumar Sharma was the Investigating Officer. He has given the details of the investigation. P.W.11 Rajendra Singh has partly investigated the case. He has given the details of recovery of the weapon of offence from all the three accused persons. It is not necessary to deal with the

evidence of recovery as know of the weapon has been found to be stained with human blood.

7. It is contended by the learned counsel that it is a case of blind murder and the accused appellants have been falsely implicated on suspicion. It is further submitted that the witness could have not seen the occurrence from a far distance. It is further submitted that if the witnesses of occurrence are believed then there is no reason as to why the two other daughters of the appellant Gurdeeta have not been added as accused. It clearly shows that P.W.1 Guddy and other witnesses have tried to implicate the entire family.

8. On careful consideration of the entire evidence, we are of the view that the incident has been witnessed by P.W.1 Guddy. P.W.2 Duda Ram, P.W.3 Harkha Ram and P.W.4 Hansraj reached on the spot after the incident was over. Thus, their testimony is relevant to the extent that the incident had occurred in which deceased Ram Pratap was being belaboured. Thus, reverting to the statement of P.W.1 Guddy, it appears that she has exaggerated the case. She had gone to the extent of implicating the wife of Gurdeeta and all the three

daughters. The police did not file charge-sheet against Sukho and Sibo the daughters of first appellant Gurdeeta.

9. It is well settled that even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, conviction can be maintained. It is the duty of court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the court to convict an accused notwithstanding the fact that evidence of some of the witnesses has been found to be deficient. Falsity of particular material witness or material particular would not ruin it from the beginning to end. Reference be made to the recent judgment of Apex court in **S.Sudershan Reddy & Ors. vs. State of Andhra Pradesh** reported in JT 2006(7) SC 237.

10. In the instant case, the specific evidence of P.W.1 Guddy is that the appellant Gurdeeta assaulted her deceased husband Ram Pratap. The First Information Report has been lodged within 2 hours of the incident. There appears to be no reason for P.W.1 Guddy to falsely implicate Gurdeeta. Even otherwise in presence

of elder male member of the family there is no reason for the female members to take a lead in causing severe injuries to a victim. Thus, we are of the view that deceased Ram Pratap was being inflicted fatal injuries by Gurdeeta Ram alone. P.W.1 Guddy has falsely implicated Mst.Pallo and Jamna. Both of them are entitled to be acquitted of the charges levelled against them.

11. Turning to the guilt of Gurdeeta Ram, inspite of the fact that he was having a Barchi in his hand, he has inflicted injuries from the blunt side. Out of 11 injuries only injury No.4 is said to be fatal. It appears that he had no intention to commit murder of deceased Ram Pratap. He can at most be clothed with the knowledge. Thus, his conviction cannot travel beyond offence under Section 304 Part-I I.P.C.

12. Consequently, the appeal is partly allowed. The appellants Pallo wife, Jamna daughter, of Gurdeeta respectively are acquitted of the charge under Section 302/34 and 452 I.P.C. They are on bail. Their bail bonds stand discharged. The conviction of appellant Gurdeeta Ram is converted to offence under Section

304 Part-I I.P.C. in place of Section 302/34 I.P.C. He is sentenced to seven years rigorous imprisonment. He is in Jail, he will serve out the remaining part of the sentence.

(R.P. VYAS), J. **(N.N.MATHUR), J.**

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